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Attorney General's Office Sues Developer For Failing to Complete Amenities

Wilmington – Attorney General Beau Biden announced today that his office has filed a lawsuit against Joseph M. Capano and two companies he owns - Odessa National Golf Course, LLC, and Odessa National Development Company, LLC – for failing to complete amenities at the Odessa National residential community as required by a binding agreement with the Delaware Department of Justice.

“The defendants had a clear obligation to build the golf course amenities they advertised to homebuyers, and they have not followed through in their agreement with our office to do so in a timely manner,” Attorney General Biden stated. “We have given Mr. Capano and his companies ample time to complete these amenities and avoid this lawsuit, but they have failed to do so. Enough is enough.”

The builders for Odessa National, including the defendants, advertised to homebuyers that Odessa National would include multiple amenities, including a private championship golf course with pro shop, putting green, and driving range; clubhouse with restaurant and fitness center; swimming pool; tennis courts; basketball courts; team sport recreation fields; playground and child play area; and other recreational areas. Buyers were assessed a mandatory \$1,200 annual fee for a social membership in the golf course at closing and Odessa National Golf Course, LLC, continues to charge these fees on a quarterly basis.

For more than five years the Attorney General's office has investigated numerous complaints about the failure to construct the promised amenities. Those investigations have led to several actions:

- An August 2009 agreement with the Attorney General's office required Mr. Capano and his companies Odessa National Golf Course, LLC and Odessa National Development Company, LLC to complete all advertised amenities related to the Odessa National Golf Course – specifically, a clubhouse, a swimming pool, and a tennis court – by December 31, 2010. In addition, Mr. Capano provided a personal Guaranty that the amenities would be completed as required. Failure to complete the amenities under the agreement potentially subjected Odessa National Golf Course, LLC to a \$100,000 penalty.

- From 2008 - 2010, the Attorney General's office investigated complaints against NVR, Inc. which, under the name "Ryan Homes," built several sections of homes in Odessa National. In 2008 the Attorney General's office settled complaints from buyers in the community's "Legacy" section that they were never told of the fee obligations that came with their properties. Ryan Homes agreed to assume the \$1,200 annual golf club membership fees for 71 homebuyers. In April 2010 the Attorney General's office settled a civil consumer fraud lawsuit it filed earlier that year against Ryan Homes following its investigation of homebuyer complaints in the "Tweedsmere" and "Lynemore" sections which it developed. That agreement provided reimbursement to 44 homeowners who had filed complaints for the period of time when they had been paying for promised amenities, including a golf course, clubhouse, swimming pool, and tennis court, that were not completed. All homeowners received reimbursement for fees they paid since living at Odessa National. In total, Ryan Homes has paid approximately \$750,000 to consumers and the Attorney General's office following investigations of homeowner complaints at Odessa National.

To-date, of all the amenities advertised to prospective buyers, only the golf course has been constructed.

On May 19, 2010 defendants Joseph M. Capano, Odessa National Golf Course, LLC, and Odessa National Development Company, LLC requested a 98 day extension to its August 2009 agreement with the Attorney General's office to complete the golf course amenities due to extraordinary weather conditions in January-February 2010. A 90-day extension, to April 1, 2011, was granted. On January 27, 2011, the defendants requested a second extension of 121 days. That request was denied. On March 31, 2011, the defendants again requested a second extension, this time of 82 days. On April 1, 2011, the Attorney General's office denied the additional extension request and provided a 30-day notice that the defendants had violated the August 2009 agreement, after which time the defendants were subject to a lawsuit.

On May 2, 2011 the Attorney General's office sued the defendants in New Castle County Superior Court seeking financial restitution for all affected residents who continue to be charged fees for amenities not yet built and a \$100,000 civil penalty for failure to complete the advertised amenities as required in the August 2009 agreement.

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